



Jersey Financial
Services Commission

Consultation Paper No. 3 2020

Revisions to the AML/CFT Handbooks

A consultation on proposals regarding revisions to the AML/CFT Handbooks in order to implement the 2012 FATF Recommendations

Issued: May 2020

Consultation Paper

The Jersey Financial Services Commission (**JFSC**) invites comments on this consultation paper by **31 July 2020**. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the JFSC.

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Alternatively, Lisa Springate at Jersey Finance Limited (**JFL**) is coordinating an Industry response that will incorporate any matters raised by local businesses. Comments should be submitted to JFL by **31 July 2020**.

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It is the policy of the JFSC to make the content of all responses available for public inspection (unless specifically requested otherwise by the respondent).

It is the policy of JFL (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company etc.). This collated, anonymised response will, typically, be placed in JFL's permanent electronic archive which is currently open to all JFL members.

Glossary of Terms

Defined terms are indicated throughout this document as follows:

AML/CFT Handbooks	Comprises: <ul style="list-style-type: none"> • The AML/CFT Handbook for Regulated Financial Services Businesses • The AML/CFT Handbook for the Accountancy Sector • The AML/CFT Handbook for the Legal Sector • The AML/CFT Handbook for Estate Agents and High Value Dealers
BBJL	Banking Business (Jersey) Law 1991
CDD	customer due diligence
CIFJL	Collective Investment Funds (Jersey) Law 1988
Commission Law	Financial Services Commission (Jersey) Law 1998
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FSJL	Financial Services (Jersey) Law 1998
IBJL	Insurance Business (Jersey) Law 1996
JFSC	Jersey Financial Services Commission
Main Handbook	the AML/CFT Handbook for Regulated Financial Services Businesses
Money Laundering Order	Money Laundering (Jersey) Order 2008
Proceeds of Crime Law	Proceeds of Crime (Jersey) Law 1999
relevant person	a person carrying on a financial services business (as described in Schedule 2 of the <i>Proceeds of Crime Law</i>) and which is carrying on that business in or from within Jersey, or, if a Jersey legal person, carrying on that business in any part of the world
SRB	self-regulatory body
Supervisory Bodies Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008

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1 Executive Summary

1.1 Overview

- 1.1.1 This consultation paper seeks feedback on proposals to make amendments to the AML/CFT Handbooks in order to implement the requirements of the 2012 FATF Recommendations, specifically in relation to:
 - 1.1.1.1 Business risk assessments
 - 1.1.1.2 Customer due diligence
 - 1.1.1.3 Reliance
 - 1.1.1.4 Equivalent countries and territories
 - 1.1.1.5 Merging the AML/CFT Handbooks
- 1.1.2 The AML/CFT Handbooks presently, in places, reflect the requirements of the 2003 FATF Recommendations.
- 1.1.3 The Policy and Legislative Sub-Group of the Jersey Financial Crime Strategy Group has undertaken a gap analysis of Jersey's AML/CFT regime against the FATF 40 Recommendations (2012 version).
- 1.1.4 The analysis identified a number of gaps which are required to be filled by both legislative and non-legislative amendments to Jersey's AML/CFT regime.
- 1.1.5 The first stage of implementation involved making amendments to the Money Laundering (Jersey) Order 2008 (the **Money Laundering Order**), and this was achieved in 2019 and 2020.
- 1.1.6 The second stage involves making non-legislative amendments to the AML/CFT Handbooks, the details of which are set out in this Consultation Paper. Feedback is invited on the proposals set out herein.
- 1.1.7 This Consultation Paper also invites comments on the JFSC's proposals to merge the AML/CFT Handbooks into one Handbook.

1.2 What is proposed and why?

- 1.2.1 It is proposed to update the Handbooks by introducing one new Code of Practice and amending guidance in a number of places.
- 1.2.2 This will bring the requirements and guidance in the AML/CFT Handbooks into line with the FATF Recommendations.

1.3 Who would be affected?

- 1.3.1 The proposals in this Consultation Paper will affect all relevant persons.

1.4 Costs and benefits

- 1.4.1 The JFSC recognises the potential costs to industry when amending the AML/CFT Handbooks. The proposals in this Consultation Paper will contribute towards the Island meeting international regulatory standards in respect of fighting financial crime and promote the Island as a well regulated place to do business.

2 Consultation

2.1 Basis for consultation

- 2.1.1 The JFSC has issued this consultation paper in accordance with Article 8(3) of the Financial Services Commission (Jersey) Law 1998 (the **Commission Law**), as amended, under which the JFSC “may, in connection with the carrying out of its functions ...consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate”.
- 2.1.2 In addition, the JFSC is required to consult on amendments to Codes of Practice that are issued in accordance with Article 22 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the **Supervisory Bodies Law**).

2.2 Responding to the consultation

- 2.2.1 The JFSC invites comments in writing from interested parties on the proposals included in this Consultation Paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2.2 A response form has been published alongside this consultation.

[Consultation response form](#)
- 2.2.3 Respondents are requested to use this form when providing feedback, either directly or via JFL. For the avoidance of doubt, all responses received, in whatever fashion, will be considered, with the response form intended only to ease processing by the JFSC.]
- 2.2.4 Comments should be received by the JFSC no later than **31 July 2020**.

2.3 Next steps

- 2.3.1 Following this consultation, the JFSC will publish feedback to this Consultation Paper.

3 The JFSC

3.1 Overview

- 3.1.1 The JFSC is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 The JFSC’s functions

- 3.2.1 Article 5 of the Commission Law prescribes that the JFSC shall be responsible for:
 - 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
 - 3.2.1.2 providing the States of Jersey, any Minister of any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;

- 3.2.1.3 preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
- 3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
 - › as are required or authorised by or under any enactment, or
 - › as the States of Jersey may, by Regulations, transfer; and
- 3.2.1.5 such other functions as are conferred on the JFSC by any other Law or enactment.

3.3 Guiding principles

- 3.3.1 Article 7 of the Commission Law sets out the JFSC's guiding principles which require the JFSC to have particular regard to:
 - 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
 - 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
 - 3.3.1.3 the best economic interests of Jersey; and
 - 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

3.4 Commission's role with respect to AML / CFT

- 3.4.1 With respect to the need to counter financial crime in both Jersey and elsewhere, the JFSC is the supervisory body that exercises supervisory functions in respect of:
 - 3.4.1.1 regulated persons; and
 - 3.4.1.2 persons carrying on specified Schedule 2 business.
- 3.4.2 The supervisory functions to be exercised by the JFSC are defined in Article 2 of the **Supervisory Bodies Law**, namely:
 - 3.4.2.1 Monitoring compliance by a supervised person
 - 3.4.2.2 carrying out the functions, powers and duties conferred under the **Supervisory Bodies Law** for the purpose of compliance by a supervised person with the requirements described in paragraph 3.4.2.1
- 3.4.3 In accordance with Article 22 of the **Supervisory Bodies Law**, the JFSC, as the supervisory body, has prepared and issued a number of codes of practice. In each case, the Code of Practice comprises of a number of individual codes of practice which may be found in the relevant Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism.

4 Proposals

4.1 FATF Recommendation 1 - Assessing risks and applying a risk-based approach

- 4.1.1 The Interpretive Note to Recommendation 1 states that financial institutions and DNFBPs should be required to take appropriate steps to identify, assess and understand their ML/TF risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels). This includes being required to have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs.
- 4.1.2 It is proposed to add a new Code of Practice at Section 2.3 of the AML/CFT Handbooks (Board/Senior Management Responsibilities) which will read as follows:
- 4.1.2.1 “A relevant person must maintain appropriate policies and procedures to enable it, when requested by the JFSC, to make available to that authority a copy of its business risk assessment.”

4.1.3 **Question 1**

Do you consider that the proposal is effective and proportionate?

4.2 FATF Recommendation 10 – Customer due diligence

- 4.2.1 The Interpretive Note to Recommendation 10 states that for customers that are legal persons or arrangements, the financial institution should be required to identify the customer and verify its identity through the following information
(b) the powers that regulate and bind the legal person or arrangement, as well as the names of the persons having a senior management position in the legal person or arrangement.
- 4.2.2 It is proposed to amend the guidance in section 4 of the AML/CFT Handbooks in the following places: (NB paragraph numbers refer to the Main Handbook)
- 4.2.3 Section 4.4.2 Obtaining evidence of identity – Legal arrangement that is a trust
The guidance at paragraph 86 will be amended to refer to evidence of the nature of a trustee’s powers rather than a trustee’s duties.
- 4.2.4 Section 4.4.3 Finding out identity – Legal arrangement that is a limited partnership
The guidance at paragraph 87 will be updated by amending the last bullet point to read “the names of all general partners and those limited partners that participate in management (if any)”.
- 4.2.5 Section 4.4.4 Obtaining evidence of identity – Legal arrangement that is a limited partnership
The guidance at paragraph 98 will be amended to refer to a relevant person obtaining, in every case, the partnership agreement or certified copy of such document as one of its sources of evidence.
- 4.2.6 Section 4.5.1 Finding out identity – Legal person that is a company.
The guidance at paragraph 123 will be updated by amending the last bullet point to read “the names of all persons having a senior management position”, and additional explanatory wording will be added to explain that individuals having a senior management position means those who have and exercise strategic decision-taking powers or who have and exercise executive control. This wording is consistent with that found at paragraph 128. Consequential amendments will be made at paragraphs 129 and 136 to replace the word ‘director/s’ with ‘person/s having a senior management position’. (Further guidance to reflect obligations in relation to a LLC will be added in due course).

- 4.2.7 Section 4.5.2 Obtaining evidence of identity - Legal person that is a company
The guidance at paragraph 134 will be amended to refer to a relevant person obtaining, in every case, the Memorandum and Articles of Association (or equivalent) or certified copy of such documents as one of its sources of evidence.
- 4.2.8 Section 4.5.4 Obtaining evidence of identity – Legal person that is a foundation
The guidance at paragraph 146 will be amended to refer to a relevant person obtaining, in every case, the foundation charter (or equivalent) or certified copy of such document as one of its sources of evidence.
- 4.2.9 Section 4.5.5 Finding out identity – Legal person that is a partnership
The guidance at paragraph 149 will be updated by amending the last bullet point to read “the names of all partners, except any limited partners that do not participate in management”.
- 4.2.10 Section 4.5.6 Obtaining evidence of identity – Legal person that is a partnership
The guidance at paragraph 158 will be amended to refer to a relevant person obtaining, in every case, the partnership agreement or certified copy of such document as one of its sources of evidence.

4.2.11 **Question 2**

Do you consider that the proposal is effective and proportionate?

4.3 FATF Recommendation 17 – Reliance on third parties

- 4.3.1 The text of the Recommendation states that where countries permit financial institutions to rely on third parties to perform elements (a) – (c) of the CDD measures set out in Recommendation 10 or to introduce business, the ultimate responsibility for CDD measures remains with the financial institution relying on the third party. The financial institution should meet certain criteria, one of which is that the financial institution should take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay.
- 4.3.2 The Money Laundering Order reflects this requirement, and the guidance at section 5.1 (paragraph 39) of the AML/CFT Handbooks states that a relevant person will demonstrate that evidence is provided without delay when it is provided within five working days of a request.
- 4.3.3 In their report dated 9 December 2015, MONEYVAL recommended that the AML/CFT Handbooks be amended to require evidence to be obtained within two working days.
- 4.3.4 It is therefore proposed to amend the guidance at section 5.1, paragraph 39 to require evidence to be made available within two working days of a request instead of five.

4.3.5 **Question 3**

Do you consider that the proposal is effective and proportionate?

- 4.3.6 Recommendation 17 also requires that when determining in which countries the third party that meets the criteria can be based, countries should have regard to information available on the level of country risk.

- 4.3.7 In section 5.1.1, paragraph 46 of the AML/CFT Handbooks, guidance provides for relevant persons to consider the adequacy of the framework to combat money laundering and the financing of terrorism in place in the country or territory in which the obliged person is based and the period of time that the framework has been in place. Guidance on how to do this can be found in section 1.7.3 of the AML/CFT Handbooks.
- 4.3.8 However, this does not include the assessment of country risk in a more general sense. It is therefore proposed to add a further bullet point to the guidance in paragraph 46 (to come second in the list) which will read “The risks posed by the country or territory in which the obliged person is based. Factors to consider include those found at section 3.3.4.1 of the Handbook”.

4.3.9 **Question 4**

Do you consider that the proposal is effective and proportionate?

4.4 Appendix B of the AML/CFT Handbooks – Equivalent countries and territories

- 4.4.1 Appendix B of the AML/CFT Handbooks comprises a non-exhaustive list of countries which are considered by the JFSC to have set requirements for measures to be taken by their domestic financial institutions and DNFBPs to forestall and prevent money laundering and the financing of terrorism that are consistent with those in the FATF Recommendations. The list does not reflect analysis of those countries’ AML regimes, but rather consists of FATF members, EU/EEA members and Crown Dependencies.
- 4.4.2 A country’s equivalence (or otherwise) is relevant for reliance (Article 16 of the Money Laundering Order) and exemptions from CDD requirements (Articles 17 and 18 of the Money Laundering Order).
- 4.4.3 There is divergence across other jurisdictions as to how much guidance is provided to financial institutions and DNFBPs in respect of determining equivalence. For example, the UK does not publish a list of equivalent jurisdictions, but instead publishes guidance on assessing the level of ML/TF risk in different jurisdictions. The Cayman Islands have recently taken a similar approach.
- 4.4.4 By way of contrast, both Guernsey and the Isle of Man publish lists of equivalent jurisdictions, reflecting analysis undertaken by their respective authorities.
- 4.4.5 The JFSC proposes to amend Appendix B so that the list of jurisdictions will be removed, to be replaced with further guidance and links to appropriate information sources to assist financial institutions and DNFBPs to conduct their own assessments of equivalence. Guidance on determining equivalence is already available at section 1.7.3 of the AML/CFT Handbooks. Section 1.7.2 will be amended to reflect the changes to Appendix B.

4.4.6 **Question 5**

Do you consider that the proposal is effective and proportionate?

5 Longer term proposal – to merge the AML/CFT Handbooks

5.1 Background

- 5.1.1 The JFSC has issued four AML/CFT Handbooks, in respect of the following sectors:
 - 5.1.1.1 Regulated Financial Services Businesses
 - 5.1.1.2 Accountants
 - 5.1.1.3 Lawyers
 - 5.1.1.4 Estate Agents and High Value Dealers
- 5.1.2 The Handbook for Regulated Financial Services Business (the **Main Handbook**) is mandatory for relevant persons carrying on regulated business.
- 5.1.3 Regulated business is defined in the Supervisory Bodies Law as the business of a recognised fund, or of an unclassified fund, within the meaning of the CIFJL, or Schedule 2 business for which a person must be registered under the BBJL, hold a permit under the CIFJL, be registered under the FSJL, or be authorised by a permit under the IJL.
- 5.1.4 The sector specific Handbooks were issued following the introduction of AML/CFT supervision of those sectors by the Supervisory Bodies Law.
- 5.1.5 Relevant persons that are not carrying on regulated business, and who are not carrying on business as accountants, lawyers, estate agents or high value dealers are not required to comply with the AML/CFT Codes of Practice contained in the Main Handbook, although they are expected to regard the Main Handbook as guidance.

5.2 Compliance with FATF Recommendations

- 5.2.1 Each FATF Recommendation applies to financial institutions, DNFBPs, or both.
- 5.2.2 Whilst the Money Laundering Order applies to all relevant persons, the absence of Handbooks for all sectors means that there are no AML/CFT Codes of Practice or guidance notes that apply directly to certain sectors (ie, casinos and all the activities described in paragraph 7 of Part B of Schedule 2 to the Proceeds of Crime Law). Thus the non-statutory provisions such as AML/CFT Codes of Practice have no mandatory effect with respect to those sectors.
- 5.2.3 As a result Jersey is unable to demonstrate full technical compliance with the FATF Recommendations across all sectors.

5.3 Proposal

- 5.3.1 In order to rectify this deficiency the JFSC proposes to:
 - 5.3.1.1 merge the four Handbooks into one (Stage 1) and
 - 5.3.1.2 extend the scope of the AML/CFT Codes and guidance notes to all relevant persons (Stage 2).
- 5.3.2 Stage 2 will be the subject of a separate Consultation Paper and is not further considered here.
- 5.3.3 It is proposed to merge the four Handbooks into one using the existing model used by the Main Handbook, ie requirements that are common across sectors will form

the main body of the Handbook, and sector specific requirements and guidance will form their own chapters. This is how the existing sector specific content for banks, trust company businesses and funds/fund services businesses has been presented in the Main Handbook.

- 5.3.4 Thus the existing sector specific sections of each sector's Handbook will be reviewed, updated where necessary and added to the Main Handbook as a separate chapter.

5.4 Analysis

- 5.4.1 The JFSC has undertaken analysis of the resource implications of maintaining four Handbooks.
- 5.4.2 Every time there is a change in legislation all the AML/CFT Handbooks have to be updated for the same changes. In the last 12 months there have been two changes to the Money Laundering Order which have necessitated many changes to the AML/CFT Handbooks, all of which have to be input, checked and published, which is a time consuming task and has resulted in delays to the updated Handbooks being published on the JFSC website.
- 5.4.3 Whilst much of the text of the AML/CFT Handbooks is the same, careful reading is required before making any changes in order to determine the relevant context and content.
- 5.4.4 Maintaining consistency across all four Handbooks is also a challenging task.
- 5.4.5 Therefore the JFSC considers that there is a business case for merging the four Handbooks. Doing so would ensure that updates can be made more quickly and that all sectors will be referring to the same text in the common areas such as corporate governance, whilst still being able to access sector specific guidance in each sector's chapter.

5.4.6 Question 6

Do you agree with the proposal to merge the four AML/CFT Handbooks?

6 Summary of questions

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